

REFERENCE TITLE: transactions; deferred presentment

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## HB 2546

Introduced by  
Representatives Sinema, Prezelski: Alvarez, Burton Cahill, Gallardo, Lopez  
L, Miranda B

AN ACT

AMENDING SECTIONS 6-1257, 6-1259 AND 6-1260, ARIZONA REVISED STATUTES;  
RELATING TO DEFERRED PRESENTMENT COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-1257, Arizona Revised Statutes, is amended to  
3 read:

4 6-1257. Duties of licensees

5 A licensee:

6 1. Shall meet the financial responsibility requirements of this  
7 chapter.

8 2. Shall deal openly, fairly and honestly in the conduct of the  
9 deferred presentment business.

10 3. Shall at all times and in every branch office conspicuously post a  
11 notice in English and Spanish that states the fee charged for deferred  
12 presentment services AND TO ALL TELEPHONE INQUIRIES SHALL VERBALLY PROVIDE  
13 INFORMATION ON FEES CHARGED FOR DEFERRED PRESENTMENT SERVICES.

14 4. Shall file with the superintendent a statement of the fees charged  
15 at every location that is licensed for deferred presentment services. The  
16 licensee shall file the statement annually and include the statement with the  
17 licensee's renewal application.

18 Sec. 2. Section 6-1259, Arizona Revised Statutes, is amended to read:

19 6-1259. Prohibited acts

20 A. A person shall not engage in the business of providing deferred  
21 presentment services without first obtaining a license pursuant to this  
22 chapter. A separate license is required for each location from which the  
23 business is conducted. The licensee shall post its license to engage in the  
24 business of deferred presentment services at each location that is licensed  
25 pursuant to this chapter.

26 B. A licensee shall not:

27 1. Advance monies on the security of a check without first obtaining  
28 reasonable evidence that indicates that the account on which the presented  
29 check is drawn is an open and active account.

30 2. Assess any fee that is more than the amount prescribed in this  
31 chapter.

32 3. At the licensed location engage in the business of:

33 (a) Making loans of money or extensions of credit other than those  
34 allowed under this chapter or title 44, chapter 11, article 3.

35 (b) Discounting notes, bills of exchange, items or other evidences of  
36 debt.

37 (c) Accepting deposits or bailments of money or items, except as  
38 expressly provided in section 6-1260.

39 4. Use or cause to be published or disseminated any advertisement that  
40 contains false, misleading or deceptive statements or representations.

41 5. Engage in the business of deferred presentment services at  
42 locations other than licensed locations.

43 6. Engage in unfair, deceptive or fraudulent practices.

1           7. Alter or delete the date on a check accepted by the licensee.

2           8. Take possession of an undated check or a check dated on a date  
3 other than the date on which the licensee takes possession of the check or  
4 the date of presentment.

5           9. Require a customer to provide security for the transaction, other  
6 than the presented check, or require the customer to provide a guaranty from  
7 another person.

8           10. Fail to take reasonable measures to ensure that no customer has  
9 more than one deferred presentment loan outstanding at any time with any  
10 licensee in this state.

11          11. Engage in the sale of the following goods or services at any  
12 licensed location:

13           (a) Gaming activities, including the sale of lottery tickets.

14           (b) Alcoholic beverages.

15          12. Tie or otherwise condition the offering of deferred presentment  
16 services to the sale of any good or service.

17          13. Permit others to engage in any activity prohibited in this section  
18 at a location licensed pursuant to this chapter.

19          14. Offer deferred presentment services for ~~less~~ FEWER than ~~five~~ SEVEN  
20 days OR MORE THAN THIRTY-ONE DAYS.

21          15. Be required to request or accept any written representation by a  
22 customer as to whether the customer has any outstanding checks for deferred  
23 presentment held by other licensees.

24          Sec. 3. Section 6-1260, Arizona Revised Statutes, is amended to read:  
25          6-1260. Deferred presentment; amount; fees; grace period

26          A. The licensee may accept for deferred presentment or deposit a check  
27 with a face amount of at least fifty dollars but not more than five hundred  
28 dollars, excluding the fees permitted in subsection ~~F~~ H of this section.

29          B. For each check the licensee accepts for deferred presentment or  
30 deposit, the licensee and the customer shall sign a written agreement that  
31 contains the name or trade name of the licensee, the transaction date, the  
32 amount of the check, the amount to be paid by the maker, a statement of the  
33 total amount of the fees charged, expressed both as a dollar amount and as an  
34 effective annual percentage rate, a disclosure statement that complies with  
35 state and federal truth in lending laws and a notice to the customer as  
36 prescribed in subsection C of this section. The written agreement shall  
37 expressly require the licensee to defer presentment or deposit of the check  
38 until a specified date. THE WRITTEN AGREEMENT SHALL BE EXECUTED ON THE SAME  
39 DAY THAT THE MONIES ARE PAID BY THE LICENSEE TO THE CUSTOMER. THE LICENSEE  
40 SHALL PROVIDE THE CUSTOMER WITH A COPY OF THE DEFERRED PRESENTMENT SERVICE  
41 AGREEMENT.

42          C. A licensee shall provide a notice IN ENGLISH AND SPANISH in a  
43 prominent place on each written agreement that specifies ~~that~~ THE FOLLOWING:

1           1. No customer may have outstanding more than one deferred presentment  
2 service agreement at one time.

3           2. PRIOR DEFERRED PRESENTMENT SERVICE AGREEMENTS SHALL BE CLOSED FOR  
4 AT LEAST TWENTY-FOUR HOURS BEFORE THE WRITTEN AGREEMENT IS EXECUTED. ~~and~~

5           3. The face amount, exclusive of any fees, cannot be more than five  
6 hundred dollars. ~~A licensee shall ask every customer who seeks deferred~~  
7 ~~presentment services whether that customer has any outstanding checks payable~~  
8 ~~to other licensees.~~

9           4. A STATEMENT SUBSTANTIALLY AS FOLLOWS:

10               STATE LAW PROHIBITS A DEFERRED PRESENTMENT COMPANY (THIS  
11 BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED  
12 PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR  
13 REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE  
14 DEPOSIT OR PRESENTMENT OF YOUR CHECK OR PAYMENT. IF YOU INFORM  
15 THIS COMPANY IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN  
16 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,  
17 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE  
18 AGREEMENT FOR AN ADDITIONAL SIXTY DAYS AFTER THE ORIGINAL  
19 TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED  
20 PRESENTMENT COMPANY SHALL REQUIRE THAT YOU, AS A CONDITION OF  
21 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING  
22 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT THIS COMPANY  
23 WILL PROVIDE TO YOU. YOU MAY ALSO AGREE TO COMPLY WITH AND  
24 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO  
25 NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT  
26 AGENCY, THIS COMPANY MAY DEPOSIT OR PRESENT YOUR CHECK FOR  
27 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE  
28 REPAYMENT OF THE DEBT AT THE END OF THE SIXTY DAY GRACE PERIOD.

29           ~~D. A licensee may rely on the customer's representation of whether the~~  
30 ~~customer has any outstanding checks for deferred presentment held by other~~  
31 ~~licensees.~~

32           D. BEFORE A LICENSEE ENTERS INTO A WRITTEN AGREEMENT WITH A CUSTOMER,  
33 THE LICENSEE SHALL ACCESS A DATABASE ESTABLISHED BY THE DEPARTMENT PURSUANT  
34 TO SUBSECTION M OF THIS SECTION TO VERIFY BOTH OF THE FOLLOWING:

35               1. THE CUSTOMER DOES NOT HAVE OUTSTANDING ANOTHER DEFERRED PRESENTMENT  
36 SERVICE AGREEMENT.

37               2. THE CUSTOMER'S PRIOR DEFERRED PRESENTMENT SERVICE AGREEMENTS HAVE  
38 BEEN CLOSED FOR AT LEAST TWENTY-FOUR HOURS.

39           E. UNTIL THE DATABASE IS ESTABLISHED BY THE DEPARTMENT PURSUANT TO  
40 SUBSECTION M OF THIS SECTION, THE CUSTOMER SHALL PROVIDE THE LICENSEE WITH A  
41 WRITTEN STATEMENT THAT THE CUSTOMER DOES NOT HAVE AN OUTSTANDING DEFERRED  
42 PRESENTMENT SERVICE AGREEMENT AND HAS NOT TERMINATED SUCH AN AGREEMENT WITHIN  
43 THE PAST TWENTY-FOUR HOURS.

1 F. THE LICENSEE SHALL IMMEDIATELY PROVIDE THE CUSTOMER WITH THE FULL  
 2 AMOUNT OF ANY CHECK TO BE HELD, LESS ONLY THE FEES ALLOWED UNDER SUBSECTION H  
 3 OF THIS SECTION. THE LICENSEE SHALL NOT COLLECT THE FEES AUTHORIZED BY  
 4 SUBSECTION H OF THIS SECTION BEFORE THE CUSTOMER'S CHECK IS PRESENTED OR  
 5 DEPOSITED.

6 ~~E.~~ G. The maker of a check has the right to redeem the check from the  
 7 licensee before the agreed on date of presentment or deposit if the maker  
 8 pays the licensee the amount of the check.

9 ~~F.~~ H. A licensee shall not directly or indirectly charge any fee or  
 10 other consideration for accepting a check for deferred presentment or deposit  
 11 that is more than ~~fifteen~~ TEN per cent of the face amount of the check for  
 12 any ~~initial~~ transaction ~~or any extension~~.

13 ~~G.~~ I. A licensee may impose the fee prescribed in subsection ~~F~~ H of  
 14 this section only once for each written agreement. The fee is earned on  
 15 execution of the written agreement and is not subject to any reimbursement  
 16 even if the maker redeems the check pursuant to subsection ~~E~~ G of this  
 17 section.

18 ~~H.~~ J. The fee charged by the licensee is not interest for purposes of  
 19 any other law or rule of this state.

20 ~~I.~~ K. A person may extend the presentment or deposit of a check not  
 21 more than ~~three~~ TWO consecutive times. ~~For each extension the customer and~~  
 22 ~~the licensee shall terminate the previous agreement and sign a separate~~  
 23 ~~agreement. During an incomplete transaction the customer may not receive any~~  
 24 ~~additional monies from the licensee. The licensee may charge a fee as~~  
 25 ~~prescribed in subsection F of this section for each extension. If a customer~~  
 26 ~~has completed a deferred presentment transaction with the licensee, the~~  
 27 ~~customer may enter into a new agreement for deferred presentment services~~  
 28 ~~with the licensee.~~ A transaction is completed when the customer's check is  
 29 presented for payment, deposited or redeemed by the customer for cash.

30 ~~J.~~ L. If a check is returned to the licensee from a payer financial  
 31 institution due to insufficient funds, a closed account or a stop payment  
 32 order, the licensee may use all available civil remedies to collect on the  
 33 check, including the imposition of the dishonored check **SERVICE** fee  
 34 prescribed in section 44-6852. An individual who issues a personal check to  
 35 a licensee under a deferred presentment agreement is not subject to criminal  
 36 prosecution pursuant to title 13, chapter 18.

37 M. BY SEPTEMBER 1, 2007, THE DEPARTMENT SHALL IMPLEMENT A DATABASE  
 38 WITH REAL-TIME ACCESS THROUGH AN INTERNET CONNECTION FOR LICENSEES. THE  
 39 DATABASE SHALL BE ACCESSIBLE TO THE DEPARTMENT AND LICENSEES TO VERIFY  
 40 WHETHER ANY DEFERRED PRESENTMENT TRANSACTIONS ARE OUTSTANDING FOR A  
 41 PARTICULAR PERSON. BEFORE ENTERING INTO A DEFERRED PRESENTMENT WRITTEN  
 42 AGREEMENT, LICENSEES SHALL SUBMIT DATA IN A FORMAT REQUIRED BY THE DEPARTMENT  
 43 BY RULE. THE FORMAT SHALL INCLUDE ALL OF THE FOLLOWING:

44 1. THE CUSTOMER'S NAME.

1           2. THE CUSTOMER'S SOCIAL SECURITY NUMBER OR EMPLOYMENT AUTHORIZATION  
2 ALIEN NUMBER.

3           3. THE CUSTOMER'S ADDRESS.

4           4. THE CUSTOMER'S DRIVER LICENSE NUMBER.

5           5. THE AMOUNT OF THE TRANSACTION.

6           6. THE DATE OF THE TRANSACTION.

7           7. THE DATE THE TRANSACTION IS CLOSED.

8           N. A LICENSEE MAY RELY ON THE INFORMATION CONTAINED IN THE DATABASE AS  
9 ACCURATE AND IS NOT SUBJECT TO AN ADMINISTRATIVE PENALTY OR CIVIL LIABILITY  
10 AS A RESULT OF RELYING ON INACCURATE INFORMATION IN THE DATABASE.

11           O. THE DEPARTMENT MAY ADOPT RULES TO ADMINISTER AND ENFORCE THIS  
12 SECTION.

13           P. BY THE END OF THE DEFERMENT PERIOD, IF THE CUSTOMER INFORMS THE  
14 LICENSEE IN PERSON THAT THE CUSTOMER CANNOT REDEEM OR PAY IN FULL IN CASH THE  
15 AMOUNT OWED TO THE LICENSEE, THE LICENSEE SHALL PROVIDE A GRACE PERIOD  
16 EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL SIXTY DAYS AFTER THE  
17 ORIGINAL TERMINATION DATE WITHOUT ANY ADDITIONAL CHARGE. AS A CONDITION OF  
18 THE GRACE PERIOD, THE CUSTOMER SHALL MAKE AN APPOINTMENT WITH A CONSUMER  
19 CREDIT COUNSELING AGENCY WITHIN THE FIRST SEVEN DAYS OF THE GRACE PERIOD AND  
20 SHALL COMPLETE THE COUNSELING BY THE END OF THE GRACE PERIOD. IF THE  
21 CUSTOMER AGREES TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE  
22 COUNSELING AGENCY, THE LICENSEE IS REQUIRED TO COMPLY WITH AND ADHERE TO THE  
23 REPAYMENT PLAN. THE LICENSEE SHALL NOT DEPOSIT OR PRESENT THE CUSTOMER'S  
24 CHECK FOR PAYMENT BEFORE THE END OF THE SIXTY DAY GRACE PERIOD UNLESS THE  
25 CUSTOMER FAILS TO COMPLY WITH THIS SUBSECTION OR FAILS TO NOTIFY THE LICENSEE  
26 OF THE COMPLIANCE.

27           Q. AT THE BEGINNING OF THE GRACE PERIOD, THE LICENSEE SHALL PROVIDE  
28 THE CUSTOMER WITH ALL OF THE FOLLOWING:

29           1. VERBAL NOTICE OF THE AVAILABILITY OF THE GRACE PERIOD.

30           2. A LIST OF APPROVED CONSUMER CREDIT COUNSELING AGENCIES PREPARED BY  
31 THE DEPARTMENT. THE DEPARTMENT LIST SHALL INCLUDE PHONE NUMBERS FOR THE  
32 AGENCIES AND THE COUNTIES SERVED BY THE AGENCIES AND SHALL INDICATE THE  
33 AGENCIES THAT PROVIDE TELEPHONE COUNSELING AND THOSE THAT PROVIDE INTERNET  
34 COUNSELING. THE DEPARTMENT SHALL UPDATE THE LIST AT LEAST ONCE EACH YEAR.

35           3. A NOTICE IN AT LEAST FOURTEEN POINT TYPE IN SUBSTANTIALLY THE  
36 FOLLOWING FORM:

37           AS A CONDITION OF OBTAINING A GRACE PERIOD THAT EXTENDS  
38 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN  
39 ADDITIONAL SIXTY DAYS, UNTIL (DATE), WITHOUT ANY ADDITIONAL  
40 FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY  
41 AN AGENCY INCLUDED ON THE LIST THAT THIS COMPANY WILL PROVIDE TO  
42 YOU. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A  
43 REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE  
44 CONDUCTED IN PERSON, BY TELEPHONE OR THROUGH THE INTERNET. YOU  
45 MUST NOTIFY US WITHIN SEVEN DAYS, BY (DATE), THAT YOU HAVE MADE

1 AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU  
2 MUST ALSO NOTIFY US WITHIN SIXTY DAYS, BY (DATE), THAT YOU HAVE  
3 COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS  
4 INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE  
5 SEVEN DAY OR SIXTY DAY NOTICE OR IF YOU HAVE NOT MADE THE  
6 APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME  
7 REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND  
8 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE REPAYMENT OF  
9 THE DEBT.

10 R. IF A CUSTOMER COMPLETES AN APPROVED PAYMENT PLAN, THE LICENSEE  
11 SHALL PAY ONE-HALF OF THE CUSTOMER'S FEE FOR THE DEFERRED PRESENTMENT SERVICE  
12 AGREEMENT TO THE CONSUMER CREDIT COUNSELING AGENCY.

13 S. EACH BRANCH OFFICE SHALL DISPLAY IN A PROMINENT PLACE A CHART  
14 SHOWING THE ACTUAL COST AND THE ANNUAL PERCENTAGE RATE OF THE INITIAL  
15 LOAN. THE CHART SHALL SHOW COSTS FOR EXTENDING THE PRESENTMENT OR DEPOSIT OF  
16 BOTH A CHECK WORTH ONE HUNDRED DOLLARS AND A CHECK WORTH FIVE HUNDRED  
17 DOLLARS.